

## SHD Paraphrased Regulations - Food Stamps

### 340 Intentional Program Violation

#### 344-2

The "clear and convincing evidence" rule is defined as "clear, explicit and unequivocal" and "so clear as to leave no substantial doubt" and "sufficiently strong to demand an unhesitating assent to every reasonable mind." (*People v. Martin* (1970) 2 Cal.3d 822 at 833)

#### 344-3

If the hearing authority rules that the household member has committed an IPV, the county shall disqualify the household member beginning with the first month the household member receives the Administrative Disqualification Notice (formerly DFA 377.7A). (§20-300.41, as revised effective July 1, 1998)

If the disqualification was ordered by a court of competent jurisdiction, the county shall initiate the disqualification within 45 days of the date the disqualification was ordered, as long as the court did not specify a date. (§20-300.42)

If the household member has signed the DCA, the disqualification shall begin within 45 days of the date the consent agreement was signed. (§20-300.43)

In each case the disqualification penalty must begin, and continue, before the mandated time frames to disqualify the individual expire. Failure to act within the specified time frames will not exempt the individual from being disqualified, but any benefits issued during the disqualification period would be considered an administrative error overissuance. (All-County Letter No. 91-26, March 25, 1991)

#### 344-4

The crime of welfare fraud, including both AFDC and FS fraud, requires proof that the individual charged was not entitled to the benefits received. (*People v. Ochoa* (1991) 231 Cal.App.3d 1413, 282 Cal.Rptr. 805)

#### 344-5

In general, no FS IPV shall be initiated unless the total claimed overissuance exceeds \$250. (All-County Letter (ACL) No. 89-97, November 7, 1989) When an FS IPV case is combined with an AFDC IPV, there is no monetary limit which applies. (ACL No. 95-43, August 15, 1995)

#### 344-6

Individuals found to have committed an IPV either through an administrative disqualification hearing or by a court of appropriate jurisdiction shall be ineligible to participate in the FS Program as specified in §20-300.3 (§63-805.1)

Individuals found to have committed an IPV either through an administrative disqualification hearing or by a court of competent jurisdiction shall be ineligible to participate in the FS Program for 12 months for the first violation, 24 months for the second violation, and permanently for the third violation. Prior to November 12, 1996, the penalties were six months, twelve months and permanent disqualification. (§20-300.311, revised effective November 12, 1996)

#### 344-6A

The penalty for trading FS for a controlled substance (as defined in 21 United State

## SHD Paraphrased Regulations - Food Stamps

### 340 Intentional Program Violation

Code §802(6)) is 24 months (12 months prior to November 12, 1996) for the first violation. The penalty is imposed after a finding of IPV by a court of appropriate jurisdiction, and the penalty cannot be imposed based on an administrative hearing. (§20-300.31; All-County Letter No. 96-35, June 28, 1996)

The penalty for the second violation of trading FS for a controlled substance, or for the first violation for trading FS for firearms, ammunition or explosives, when the IPV determination is made by a court of appropriate jurisdiction, is permanent disqualification. (§20-300.313)

#### 344-6B

The penalty for falsifying the identity or place of residence of an individual in order to receive multiple FS benefits simultaneously is disqualification from the FS program for a 10-year period. (§20-300.314, effective November 12, 1996) This penalty shall be imposed after a finding of an IPV made in an ADH decision, or by a court of appropriate jurisdiction. (§20-300.314(a))

#### 344-6C

The penalty for trafficking (as defined in 7 United States Code §§2024(b) and (c)) FS benefits of \$500 or more is permanent disqualification from the FS program. This penalty shall be imposed only after a finding by a court of appropriate jurisdiction (§20-300.315, .315(a))

#### 344-6D

When it has been established that the respondent committed two FS IPV's prior to August 22, 1996, these shall be considered only one disqualification when the higher penalties, which became effective no earlier than August 22, 1996, are imposed. (§20-300.343; All-County Information Notice No. I-01-00, January 4, 2000)

#### 344-7

An IPV is defined as intentionally:

- .11 making a false or misleading statement, or misrepresenting, concealing, or withholding facts, or
- .12 committing any act which constitutes a violation of the Food Stamp Act, the FS Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of FS coupons or ATPs. (§§20-300.11 and .12)

Any person who knowingly uses, transfers, sells, purchases or possesses FS benefits in any manner not authorized by the federal FS Act is guilty of either a misdemeanor or a felony. (Welfare and Institutions Codes §10980(g))

#### 344-8

Effective December 5, 1995, any current determination of an IPV for an eligible recipient shall be imposed as required under current regulations. If the person is not currently eligible for FS benefits, the period of disqualification shall start as if the person was eligible. (§20-300.36, as modified effective July 1, 1998)

## SHD Paraphrased Regulations - Food Stamps

### 340 Intentional Program Violation

There shall be no period of disqualification if the person becomes eligible and the period of disqualification has expired. If the period of disqualification has not yet expired, the remaining months of the sanction can be imposed.

(All-County Letter No. 95-81, December 21, 1995, implementing *Garcia and Zellar v. Concannon* (1995) 67 F. 3d 256, and modifying §20-300.36, which was revised effective July 1, 1998)

#### 344-9

The FS disqualification penalties shall apply only to individuals disqualified for IPV which occurred during a certification period after the household has been notified by the County Welfare Department of the new disqualification penalties. If the IPV which led to the disqualification occurred prior to the household's notification of the disqualification penalties, the individual shall be disqualified in accord with the FS Program's disqualification penalty regulations in effect at the time of the individual's offense. (§20-300.32, revised effective July 1, 1998)

#### 344-9A

When an IPV which led to the disqualification of an individual occurred prior to the notification of the increased penalties which became effective August 22, 1996, and the household was not notified of the new penalties, then the old penalties will be imposed. (§20-300.32)

A fraudulent act which began before August 22, 1996 and continued beyond that date may result, in appropriate circumstances, in imposition of the higher IPV penalties. (All-County Information Notice No. I-01-00, January 4, 2000)

#### 344-10

Federal FS regulations require that the State agency inform the household in writing of the disqualification penalties for IPV each time the household applies for Program benefits. The penalties shall be in clear, prominent and boldface lettering on the application form. (7 Code of Federal Regulations (CFR) §273.16.(d), in effect since at least 1986)